IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

OP.No. 16337 of 1997(T)

PETITIONER:

T.M.VARGHESE (CONDUCTOR),
KERALA STATE ROAD TRANSPORT CORPORATION,
ANGAMALY, ERNAKULAM DISTRICT.

BY ADV. SMT.DAISY THAMPI

RESPONDENTS:
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1. **THE MANAGING DIRECTOR,**
   KERALA STATE ROAD TRANSPORT CORPORATION,
   TRIVANDRUM.

2. **THE EXECUTIVE DIRECTOR (VIGILANCE & STATISTICS),**
   KERALA STATE ROAD TRANSORT CORPORATION,
   TRIVANDRUM.

BY ADV. SRI. T.RAVIKUMAR, SC, KSRTC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.29209/1997 IN O.P.NO.16337/1997 T

CLOSED

20/06/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE JUDGMENT OF THE JUDL. 1ST CLASS MAGISTRATE COURT, MUVATTUPUZHA IN S.T.NO.647/93 DTD. 8/08/94.**

EXT.P2: **COPY OF THE SUSPENSION ORDER NO.VLD2-08112/93 DTD. 29/01/93.**

EXT.P3: **COPY OF THE SHOW CAUSE NOTICE DTD. 19/04/1993.**

EXT.P3(A): **COPY OF THE CHARGE SHEET RECEIVED ALONG WITH EXT.P3.**

EXT.P4: **COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER AGAINST EXTS.P3 AND P3(A).**

EXT.P5: **COPY OF THE MEMORANDUM NO.G2-4528/93/CTL DTD. 15/09/93 ISSUED BY THE ENQUIRY OFFICER.**

EXT.P6: **COPY OF THE MEMORANDUM NO.PL.2-3603/92/EMK DTD. 27/12/1993 ISSUED BY THE DIST. TRANSPORT OFFICER, ERNAKULAM.**

EXT.P7: **COPY OF THE PROCEEDINGS NO.VLD2-08118/93 DTD. 1/03/1994 OF THE 2ND RESPONDENT.**

EXT.P8: **COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ON 21/04/1994 AGAINST EXT.P7.**

EXT.P9: **COPY OF THE PROCEEDINGS NO.D.DIS.33020/94/APLI DTD. 25/01/1996 OF THE 1ST RESPONDENT.**

EXT.P10: **COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P.NO. 15967/95 DTD. 2/02/1996.**

EXT.P11: **COPY OF THE ORDER NO.D.DIS.33019/94/AOL.2. DTD. 4/08/1997 OF THE KERALA STATE ROAD TRANSPORT CORPORATION.**

/TRUE COPY/

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 16337 of 1997 (T)

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Dated this the 20th day of June, 2007

J U D G M E N T

The petitioner was a Conductor in K.S.R.T.C. While on duty, in a particular route, two Ticket Checkers boarded the bus. The disciplinary proceedings against the petitioner and another (Driver) was on the ground that they had prevented the Checking Inspectors from discharging their duties and responsibilities and had turned the passengers against the Checking Inspectors, resulting in certain incidents of altercation, causing injuries to the Ticket Checkers, that ultimately led to criminal case against the petitioner and the Driver, ending up in an order of acquittal, as per Ext.P1. In so far as the petitioner is concerned, in the disciplinary proceedings there were two additional charges. Firstly, that there was dereliction of duty and misconduct in intentional non-collection of fair and non-issuance of tickets and; secondly, failure to record point entries. The enquiry concluded, holding the petitioner guilty, resulting in

imposition of barring of two increments with cumulative effect. The punishment imposed on the Driver was set aside by Ext.P9 order in appeal and, by Ext.P10 judgment this Court granted the Driver further reliefs on such decisions.

2. In so far as the petitioner is concerned, by Ext.P11 appellate order, the punishment was reduced to barring of increments for three months and treating the period of suspension, which is stated to be for 11 months, as duty for the limited purpose of pension. The pay and allowance for that period was restricted to the subsistence allowance.

3. In Ext.P8 appeal, particularly, in paragraph '4' thereof , the appellant had pleaded a case, on the basis of the materials in the enquiry file and on the basis of the evidence tendered by the Ticket Examiners in the criminal court, that the basis of the findings of the enquiry officer are unsustainable. He attempted to point out contradictions between the statements of the two ticket examiners. This is a matter entirely within the realm of the fact finding authority and it is not for this Court to sit in

appeal on such findings, unless it is shown that there is failure of due process or that the findings are palpably perverse. But, while such contentions are being dealt with in a statutory appeal, within the realm of service laws, the appellate authority is duty bound to consider such contentions, particularly, when they are specifically raised with reference to the basic facts. In so far as Ext.P11 order is concerned, all that the appellate authority has noticed is that the incident in question was an unfortunate one and that on examination of the enquiry report and the records, it is found that there was lapse on the part of the appellant, which attracted the direct involvement of the Inspectors in the issuance of the tickets to passengers, who boarded from Ambalapady. The quality of appreciation of materials by an appellate authority in the realm of discipline required that the contentions raised with reference to the statements of the Checking Inspectors ought to have been gone into in further detail because if there were serious irreconcilable contradictions, they could not be ignored. Needless to state, it is for the authority to consider the entire materials and come to its own conclusions, for reasons to be

stated. To that extent, the impugned appellate order requires reconsideration at the hands of the appellate authority.

In the result, this original petition is disposed of. The impugned Ext.P1, in so far as it affects the petitioner, is set aside and it is directed that Ext.P8 appeal will be taken up, reconsidered and decided upon, after affording the petitioner an opportunity of being heard and a final decision taken within a time limit of four months from the date of receipt of a copy of this judgment. The punishment imposed as per the impugned Ext.P11 shall not be enhanced. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 16337 of 1997 (T)

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J U D G M E N T

20th June, 2007